

of the living joint inventors and the legal representative are required on the papers filed with the USPTO.

#### **409.02 [R-3] Insanity or Other Legal Incapacity**

##### *37 CFR 1.43. When the inventor is insane or legally incapacitated.*

In case an inventor is insane or otherwise legally incapacitated, the legal representative (guardian, conservator, etc.) of such inventor may make the necessary oath or declaration, and apply for and obtain the patent.

When an inventor \*>becomes legally incapacitated< prior to the filing of an application and prior to \*>executing< the oath or declaration required by 37 CFR 1.63 and no legal representative has been appointed, one must be appointed by a court of competent jurisdiction for the purpose of execution of the oath or declaration of the application.

#### **409.03 [R-3] Unavailability of Inventor**

##### *35 U.S.C. 116. Inventors*

When an invention is made by two or more persons jointly, they shall apply for patent jointly and each make the required oath, except as otherwise provided in this title. Inventors may apply for a patent jointly even though (1) they did not physically work together or at the same time, (2) each did not make the same type or amount of contribution, or (3) each did not make a contribution to the subject matter of every claim of the patent.

If a joint inventor refuses to join in an application for patent or cannot be found or reached after diligent effort, the application may be made by the other inventor on behalf of himself and the omitted inventor. The Director, on proof of the pertinent facts and after such notice to the omitted inventor as he prescribes, may grant a patent to the inventor making the application, subject to the same rights which the omitted inventor would have had if he had been joined. The omitted inventor may subsequently join in the application.

Whenever through error a person is named in an application for patent as the inventor, or through an error an inventor is not named in an application, and such error arose without any deceptive intention on his part, the Director may permit the application to be amended accordingly, under such terms as he prescribes.

##### *35 U.S.C. 118. Filing by other than inventor*

Whenever an inventor refuses to execute an application for patent, or cannot be found or reached after diligent effort, a person to whom the inventor has assigned or agreed in writing to assign the invention or who otherwise shows sufficient proprietary interest in the matter justifying such action, may make application for patent on behalf of and as agent for the inventor on proof of the pertinent facts and a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage; and the Director may grant a patent to such inventor upon such notice to him as the Director deems sufficient, and on compliance with such regulations as he prescribes.

##### *37 CFR 1.47. Filing when an inventor refuses to sign or cannot be reached.*

(a) \*\*> If a joint inventor refuses to join in an application for patent or cannot be found or reached after diligent effort, the application may be made by the other inventor on behalf of himself or herself and the nonsigning inventor. The oath or declaration in such an application must be accompanied by a petition including proof of the pertinent facts, the fee set forth in § 1.17(g), and the last known address of the nonsigning inventor. The nonsigning inventor may subsequently join in the application by filing an oath or declaration complying with § 1.63<.

(b) \*\*> Whenever all of the inventors refuse to execute an application for patent, or cannot be found or reached after diligent effort, a person to whom an inventor has assigned or agreed in writing to assign the invention, or who otherwise shows sufficient proprietary interest in the matter justifying such action, may make application for patent on behalf of and as agent for all the inventors. The oath or declaration in such an application must be accompanied by a petition including proof of the pertinent facts, a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage, the fee set forth in § 1.17(g), and the last known address of all of the inventors. An inventor may subsequently join in the application by filing an oath or declaration complying with § 1.63<.

(c) The Office will send notice of the filing of the application to all inventors who have not joined in the application at the address(es) provided in the petition under this section, and publish notice of the filing of the application in the *Official Gazette*. The Office may dispense with this notice provision in a continuation or divisional application, if notice regarding the filing of the prior application was given to the nonsigning inventor(s).

Application papers submitted pursuant to 37 CFR 1.47 are forwarded by the Office of Initial Patent Examination (OIPE) to the Office of Petitions for a determination of whether the papers are proper, complete, and acceptable under 37 CFR 1.47 and for a

decision on the petition under 37 CFR 1.47 before the application is sent to the  
Technology Center. Since an application without an oath or declaration executed by all of  
the inventors may be an incomplete application, an examiner should not mail an Office  
action in an application without a fully executed oath or declaration under 37 CFR 1.63  
unless the application has been accorded status under 37 CFR 1.47 in a written decision  
on the petition.